IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 38 of 2004.

Judgment reserved on: 23.11.2007

Decided on: 30th November, 2007.

M/s.Basandrai Bottlers (P) Ltd. .....Appellant.

VERSUS

Roshan Lal .....Respondent.

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The Hon'ble Mr. Justice Deepak Gupta, ACJ.

Whether approved for reporting?[1] No

For the Appellant : Mr. D.Dadhwal, Advocate.

For the Respondent : Mr.Ashwani Pathak, Advocate.

Deepak Gupta, ACJ

This appeal by the employer is directed against the award of the learned Workmen's Compensation Commissioner (SDM), Mandi in petition No.6 of 1997 decided on 9.7.2003 whereby he has awarded a sum of Rs.1,55,000/- in favour of the workman along with interest @ 12% p.a.

The following substantial questions of law arise in the appeal:

> "(1) Whether the award of the Commissioner is vitiated being in violation of the schedule appended with the Workmen's Compensation Act, 1923?
> (2) Whether the award of the Commissioner is vitiated on the ground of wrongly laid reliance upon the documentary evidence more specifically on the medical report and disability certificate?"

The brief facts of the case are that the respondent-workman was employed by the employer. According to him he was

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engaged as Filler and his job was to fill wine in the bottles. On 10.4.1996 when he fixed the bottle under the filling nozzle of the machine all of a sudden the bottle exploded as a result of which the employee suffered serious injuries in his right hand and became incapacitated to work properly. His services were in fact terminated later on.

The employee remained under treatment and was treated at Civil Hospital, Sundernagar, IGMC Shimla and PGI Chandigarh. During the course of evidence the employee examined PW-4 Dr.L.D. Vaidya and proved on record the permanent disability certificate Ext.PW-4/A which showed that the disability of the employee was to the extent of 45%.

The learned Commissioner after considering the entire evidence held the employee entitled to a sum of Rs.1,55,000/-. The Commissioner did not decide the question as to what is the extent of loss of earning capacity and did not calculated the compensation in terms of Section 4(1)(c) of the Workmen's Compensation Act.

Section 4(1)(c) of the Workmen's Compensation Act reads as follows:

> "4.Amount of compensation:(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-
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> (a)&(b)……..
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> |---|---|
> | (c) Where permanent Partial disablement results from the injury. | (i)in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which should have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and
(ii)in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as |

> assessed by the qualified medical practitioner) permanently caused by the injury.
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> Explanation I. Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.
>
> Explanation II.-In assessing the loss of earning capacity for the purposes of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;"

A bare perusal of the aforesaid provision shows that where permanent partial disablement results from any injury then in case injury is specified in Part-II of Schedule-I the compensation has to be assessed as per the percentage of loss of earning capacity specified in the schedule as relatable to the amount payable in case of permanent total disablement. In case the injury is not specified in Schedule-I then the disability has to be assessed in proportion to the loss of earning capacity as assessed by a qualified medical practitioner. In this case the employee himself examined the qualified medical practitioner who stated that the disability is to the extent of 45%. There is not a word in the statement of the doctor that the loss of earning capacity is more than 45%.

As per the evidence on record the first medical certificate was issued by the PGI on 15.11.1996 in which the Board of PGI assessed the disability of the employee at 45% in relation to his upper limb and 23 % in relation to his whole body. In Ext.PW-4/A the loss has been assessed at 45%. There is no clear-cut material on record to show what were the injuries suffered by the petitioner so as to bring them within the Schedule-I. All that can be gathered from the record

that the petitioner suffered injury on his right hand which partially affected the functioning of his right hand. The disability has been assessed at 45 % by the Medical officer. There is no evidence worth the name to indicate that this disability has resulted in 100% loss of earning capacity. Therefore, at best taking a very liberal view of the matter the loss of earning capacity can be equated to loss of disability and taken to be 45%.

In view of the above discussion in answer to the substantial questions of law raised it is held that the award of the Commissioner is totally in violation of the Workmen's Compensation Act since he has not even assessed the disability or the loss of earning capacity of the claimant and has not awarded compensation by taking into consideration the disability certificate issued by the Medical officer.

It has been argued on behalf of the employee that he is unable to do the job and is not in employment. However, there is no material worth the name to show as to what is the loss of earning capacity as contemplated under Section 4(1)(c) of the Act referred to above. If the loss of earning capacity is taken at 45% the claimant would have been entitled to 45% of Rs.1,55,000/- which has been awarded to him. The petitioner is therefore held entitled to a sum of Rs.69, 750/- in stead of Rs.1,55,000/-. He is also entitled to interest @ 12% p.a. on this amount from 10.4.1996 till the date of payment/deposit.

The appeal is allowed in the aforesaid terms and the award of the Workmen's Compensation Commissioner is reduced from

Rs.1,55,000/- to Rs.69,750/- along with interest as above. No order as to costs.

(Deepak Gupta)
Acting Chief Justice.

November 30, 2007.
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